

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-CV-212-BO

ALLEN CLIFFORD SMITH,)
Plaintiff,)
v.)
DEPARTMENT OF VETERAN AFFAIRS)
MEDICAL CENTER DURHAM, NC,)
Defendant.)

ORDER

This cause comes before the Court on plaintiff's failure to make service on defendant within the time provided by Fed. R. Civ. P. 4(m).


Plaintiff, proceeding in this matter *pro se*, instituted this action by filing a complaint in this Court on May 17, 2019. [DE 1]. Summons prepared by plaintiff were issued the same day. [DE 4]. On August 26, 2019, the Clerk of Court notified plaintiff of his failure to make service within ninety days of the filing of the complaint. [DE 5]. The noticed informed plaintiff that he had fourteen days from receipt of the notice to show good cause to the Court for his failure to serve defendant within the time allowed. On September 5, 2019, plaintiff filed two U.S.P.S. tracking receipts demonstrating that a package was delivered to an agent for final delivery on August 31, 2019, and that a package was delivered on September 3, 2019. [DE 6].

Rule 4 of the Federal Rules of Civil Procedure provides that proper service must be effected on a defendant within ninety days after the complaint is filed. Fed. R. Civ. P. 4(m). If proper service is not made within ninety days, the court must dismiss the action without prejudice after notice to the plaintiff or order that service be made within a specified time. *Id.* If the plaintiff has

shown good cause, however, the court must extend the time for a reasonable period. *Id.* Good cause for failure to comply with Rule 4 generally exists only when outside factors beyond the plaintiff's control defeat service. *See Lepone-Dempsey v. Carroll Cnty Comm'rs*, 476 F.3d 1277, 1278 (11th Cir. 2007).

Plaintiff's filing fails to demonstrate either that he made service on defendant within the time provided by Rule 4 or that he has established good cause for failing to do so. Plaintiff's complaint is, therefore, DISMISSED WITHOUT PREJUDICE pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

SO ORDERED, this 23 day of October, 2019.


TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE